

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>In the Matter of</b>	)	
	)	
<b>Petition for Waiver of</b>	)	<b>WT Docket No. 01-320</b>
<b>Section 64.402 of the</b>	)	
<b>Commission's Rules</b>	)	

**To: Chief, Wireless Telecommunications Bureau**

**COMMENTS OF THE NEW YORK CITY DEPARTMENT OF  
INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS**

Pursuant to Section 1.925(c)(i), and in response to the Public Notice, *Wireless Telecommunications Bureau Seeks Comment On a Petition For Waiver Of The Commission's Part 64 Priority Access Rules*, DA 01-2660, Released November 14, 2001, ("Public Notice"), the New York City Department of Information Technology and Telecommunications ("the City") requests that the Commission, through its Wireless Telecommunications Bureau, specifically condition any grant to Verizon Wireless ("Verizon") of a waiver of Section 64.402 of the Commission's Rules.<sup>1</sup> The City is one of three local jurisdictions that, according to Verizon's Petition for Waiver ("Petition") and the Statement in Support filed on behalf of the Office of the Manager, National Communications System (NCS), is designated an "initial market" to receive a simplified type of wireless priority access called Emergency Services Capability (ESC).<sup>2</sup> Thus, the

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<sup>1</sup> 47 CFR § 64.402.

<sup>2</sup> The two other "initial markets" are the District of Columbia, that will receive ESC on December 10, 2001, and Salt Lake City, Utah.

City has an immediate and critical interest in how the Commission decides to grant and administer the relief Verizon requests.

As an initial matter, the City does not oppose grant of the waiver. Based on the City's uniquely informed perspective on emergency response issues, the City believes without qualification that any form of wireless priority access deployed in an effective way is superior to none. The City recognizes that Verizon has sought to be responsive to the NCS' request for a form of wireless priority access when there is no "off the shelf" equipment to provide the levels of priority contemplated by Section 64.402, and it is not currently feasible to provide such highly desirable features as "priority queuing" and continuous access. The City further recognizes that Verizon is attempting to provide this limited service within the constraints of current CMRS network design, which has neither the spectrum capacity nor the integrated capabilities to provide Priority Access Service (PAS) as defined by Section 64.402. Indeed, Verizon makes clear that both ESC and Access Channel Persistence<sup>3</sup> only *increase the chance* that national security and emergency preparedness (NSEP) users with pre-programmed handsets will be able to access a radio channel. Verizon's waiver correctly presents these wireless priority capabilities as a marginal improvement over the status quo, but states that continuing technological innovation in this area will eventually produce an effective PAS that is compliant with Section 64.402.<sup>4</sup>

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<sup>3</sup> Access Channel Persistence is the form of wireless priority access proposed for markets where Nortel's cdma 2000 1XRTT will be deployed. It is entirely possible that New York City and other Verizon markets will be transitioned to the 1XRTT platform before deployment of PAS that is compliant with Section 64.02. *Verizon Wireless Selects Nortel Networks for \$500 Million Network Buildout*, April 12, 2000.

<sup>4</sup> Of course, these types of technology improvements do not address the capacity limitations of commercial wireless networks during emergencies.

As both Verizon and NCS recognize, during emergency incidents, mobile phone traffic increases exponentially, far exceeding the capacity of commercial wireless networks. Thus, it is clear that in order for modest improvements such as ESC or Access Channel Persistence to have any utility, NCS will not be able to provision all current or future NSEP users with a form of wireless priority access. NCS will face the novel challenge of determining how to provision authorized NSEP personnel with a communications capability that is in short supply. If too many pre-programmed handsets are made available to authorized NSEP users, the result will be inability to access any radio channel, undermining the objective of Verizon's interim solutions.

This inherent necessity for NCS to limit availability of ESC and Access Channel Persistence is central to the City's concern. Verizon contemplates only one level of "priority" for ESC. When Verizon transitions to Access Channel Persistence in the City, there will be only two "priority" levels among authorized NSEP personnel: "priority" and "non priority." Based on its recent experience, the City knows that it will be tasked, through its Office of Emergency Management, with coordinating and performing all aspects of emergency response. While Federal personnel are available to assist in the event of major disasters, and provide an important planning/training resource for emergency preparedness, it is the City's authorized NSEP personnel that are the only "first responders" during an incident and in the critical hours following an incident. It is imperative that the FCC ensure that the City's highest priority emergency communications users receive the benefit of any improved emergency response capabilities, especially where the legal protections afforded by Section 64.402 have been dispensed with.

Verizon's proposal inherently does not contemplate any type of standard, publicly stated prioritization. It remains the FCC's sole responsibility to provide the regulatory framework that will guide NCS implementation of even this truncated wireless priority service. The NCS' implementation activities are managed through the Department of Defense, the National Security Council and other Executive Branch organizations. NCS implementation is also influenced by the advice and recommendations of the Committee of Principals (representatives from twenty-two Federal agencies, including the FCC) and the National Security Telecommunications Advisory Committee (high-level representatives from many of the nation's technology companies). State and local governments do not have a structural mechanism for influencing NCS implementation. The FCC's Part 64 Rules have worked well to ensure that NCS meets the City's critical NSEP needs. Without the protection of those rules, the City has no certainty that it will receive these modest wireless access capabilities while the Verizon waiver is in effect. Even if NCS has extended certain commitments to the City regarding availability of ESC and Access Channel Persistence, NCS is free to reprioritize if the Commission does not require NCS to provide Verizon's wireless access capability to the City.

Accordingly, the City respectfully requests that the Commission make clear in any waiver grant language that NCS is directed to consult closely with the City, and give substantial deference to the City's assessment of its critical emergency response needs. Interim wireless access capability is another resource that can contribute to improved communication and coordination. Specifically, the City requests that the NCS allocate a minimum of two-thirds of all pre-programmed mobile handsets to the City for distribution to authorized NSEP personnel. The City further proposes that the

Commission's newly formed Homeland Security Policy Council play an ongoing role in over-seeing waiver implementation. NCS should report to the Homeland Security Policy Council at pre-determined, regular intervals during the period when the safeguards of Section 64.402 are effectively suspended. For example, NCS should provide the Homeland Security Policy Council with a plan that will govern all determinations of which authorized NSEP personnel will receive pre-programmed mobile handsets so that the FCC may confirm that NCS implementation of this wireless access is consistent with the underlying policy objectives of Section 64.402. In addition, the City believes that Verizon and NCS should be directed to undertake ESC and Access Channel Persistence trials in order to develop empirical information regarding capacity constraints in each area where these wireless access solutions are offered. This type of data is of critical importance in planning optimal use of interim wireless access resources.<sup>5</sup> The City further requests that the Commission authorize the Homeland Security Policy Council to consider and resolve any disputes that may arise regarding whether NCS is provisioning ESC and Access Channel Persistence in accordance with the terms and conditions of the Commission's Waiver Order.

For the foregoing reasons, the City urges the Commission to require that a minimum of two-thirds of pre-programmed mobile handsets be allocated to the City for use by authorized NSEP personnel. The City further believes that the public interest in maximizing effective use of these interim wireless access resources would best be served

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<sup>5</sup> For example, if trials demonstrate that, in the New York metropolitan area, sixty pre-programmed mobile handsets in use at the same time will result in only 55% of the handsets accessing an emergency use channel, but thirty-five pre-programmed mobile handsets in use at the same time, will enable 98% of those handsets to achieve reliable

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if the Commission's Homeland Security Policy Council maintains a continuing role in ensuring that Verizon's waiver is implemented in a manner that does not undercut the regulatory objectives of Section 64.402, and that assists authorized NSEP users in better understanding the constraints of these new capabilities.

Respectfully submitted,

Agostino Cangemi,  
General Counsel  
New York City Department of Information  
Technology and Telecommunications

November 21, 2001

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access, then more informed decisions can be made regarding allocation of wireless access resources.

## **CERTIFICATE OF SERVICE**

I, Shelia Swanson, a legal assistant at Arnold & Porter, hereby certify that on this 21<sup>st</sup> day of November, 2001, a copy of the foregoing Comments of the City of New York Department of Information Technology and Telecommunications was both e-mailed, and mailed, first class, postage prepaid to:

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